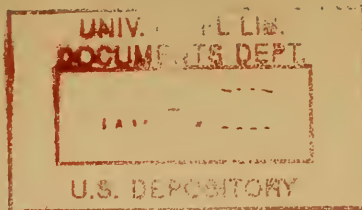


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**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 44

IN THE MATTER OF

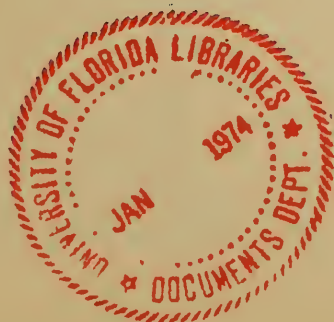
FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

DOCKET NO. 7328

*Marie Fredericka Schmidt, Claimant
Whitman & Knauth, Inc., Agent*

CHANDLER P. ANDERSON
American Commissioner

U. S. GOVERNMENT PRINTING OFFICE: 1929



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON

American Commissioner

(11)



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Marie Fredericka Schmidt, Claimant
Whitman & Knauth, Inc., Agent

The above-named claimant, now Mrs. Edmund Funck, has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by her to her agent, Whitman & Knauth, Inc., of New York City, N. Y., as compensation for whatever services have been rendered by the agent on behalf of and with the authority of the claimant, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

The claimant has objected to the amount of the fee asked by the agent on the ground that it is excessive, and the agent and its attorneys, Katz & Sommerich, of New York City, have been notified of the filing by the claimant of her request that a reasonable fee be fixed. The agent and its attorneys, in response to a request by the American Commissioner, have filed with him two affidavits, sworn to, respectively, by Mr. William Marx and Mr. Frederick L. Cramer,

giving the information which they desire to have considered by the Commissioner as showing the reasonableness of the fee asked, which information has been brought to the attention of the claimant, who has filed an affidavit in reply, a copy of which has been transmitted to the attorneys for the agent. The agent has filed an affidavit, sworn to by Mr. Marx, in reply, a copy of which has been transmitted to the claimant, who has filed a further affidavit in reply.

In this case an award was rendered by this Commission on November 8, 1926, on behalf of the claimant, for \$5,587.97, with interest thereon at the rate of five per cent per annum from January 1, 1920, to the date of payment. The total amount received by the claimant from the Treasury Department on or about July 11, 1928, in payment of this award, was \$7,988.22.

The amount of the fee asked by the agent, which includes the services of its attorneys, Katz & Sommerich, and all expenses and disbursements, is a sum equal to fifteen per cent of the amount received by the claimant from the Treasury Department in payment of her award.

Except that this claim was finally treated as a debt claim, and not as an estate claim, the conditions and circumstances in this case are in other essential respects identical with that dealt with by the American Commissioner in his decision, (Decision No. 40), rendered June 25, 1929, in a similar proceeding, brought by another claimant, for fixing the fees to be paid to the same agent who represents the claimant in this case.

Prior to August, 1921, Knauth, Nachod & Kuhne, of New York City, had represented this claimant in matters relating to a legacy left to the claimant by her aunt, who died in Germany in 1915. On August 2, 1921, as stated by the claimant, and on August 8, 1921, as stated by Mr. Marx, the claimant paid Knauth, Nachod & Kuhne the sum of \$15.40 for "advances made for consul certificates, certified translations of documents, etc." In December, 1922, the claimant, in reply to a letter from her attorneys in fact—Knauth, Nachod & Kuhne—requested that firm to file a claim on her behalf with this Commission, which had then been recently established. This firm had informed the claimant that its charges "for filing your claim * * * and all services to the ultimate collection thereof will be 5% plus attorneys fees and disbursements not to exceed an

additional 10% on the net amount " collected. The claimant signed and verified a petition in support of her claim. The claim was included in a list of claims presented to the Department of State by Katz & Sommerich, attorneys for Knauth, Nachod & Kuhne. In June, 1923, Knauth, Nachod & Kuhne became bankrupt; its power of attorney department was transferred to Whitman & Knauth, Inc., the agent herein. By powers of attorney executed by the claimant, first on December 10, 1924, and later on February 8, 1927, she authorized this agent to prosecute her claim and to remit the proceeds of whatever might be realized. These powers of attorney expressly revoked all powers of attorney previously given and contained powers of substitution. They assigned to the agent so much of the claimant's right, title, and interest in the claim " as will cover whatever cost and expenses " the agent " may have reasonably sustained together with a fee commensurate with the services hereunder rendered " by the agent or its attorneys. All proceedings before this Commission leading up to the award in this case were conducted by Katz & Sommerich, who were appointed by the agent as substituted attorneys. The claimant made no objection to the conduct of her claim or to the compensation fixed by the agent until after the enactment of the " Settlement of War Claims Act of 1928," which by Section 9 authorized the American Commissioner to fix reasonable fees upon the request of claimants.

The amount of \$15.40 paid by the claimant in August, 1921, to Knauth, Nachod & Kuhne was for expenses incurred in establishing her right to her aunt's legacy before this claim arose and prior to the establishment of this Commission.

The reasons and considerations set forth in Decision No. 40, above mentioned, which are hereby incorporated, by reference, in this decision, apply equally in this case and result in corresponding conclusions.

Now, therefore, considering that the payment of any fee to the agent and its attorneys was contingent upon securing and collecting an award, and that the fee to be paid includes all disbursements and expenses, and considering the character and extent and value of the services rendered by the agent and its attorneys, and in view of the considerations stated in the general Jurisdictional and Administrative Decision rendered by the American Commissioner under date

of September 28, 1928, and after careful examination and full consideration of the information furnished in these proceedings by the agent, its attorneys, and the claimant, and by the records of this Commission pertinent to the questions involved, and after due deliberation thereon,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, Marie Fredericka Schmidt, to her agent, Whitman & Knauth, Inc., in this case, an amount equal to fifteen per cent of the amount received by this claimant from the Treasury Department in payment of the award rendered on her behalf, the said fee to include the services of Katz & Sommerich, the attorneys for the agent, and all expenses and disbursements, and to be paid by the said claimant and received by the agent for itself and its attorneys as full compensation for all services rendered in the prosecution and collection of this claim, as defined by Section 9 of the "Settlement of War Claims Act of 1928."

Done at Washington, D. C., this 26th day of June, 1929.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

United States and Germany.

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